

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JUNE 24, 2008

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2800

Introduced by Assembly Member Huffman

**(Coauthors: Assembly Members Adams, Aghazarian, Berryhill,
Blakeslee, Plescia, and Smyth)**

(Coauthors: Senators Kehoe, Lowenthal, Maldonado, and Scott)

February 22, 2008

An act to amend Section 1861.02 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2800, as amended, Huffman. Automobile insurance: rates.

Existing law, enacted by the voters in Proposition 103 at the November 8, 1988, statewide general election, requires insurers to set automotive insurance rates and premiums using specified factors, including the number of miles the insured drives annually and any factors the commissioner may specify that have a substantial relationship to the risk of loss.

This bill would provide that in determining the number of miles an insured drives, an insurer may apply different rating factors for voluntary ~~insurance-verified~~ *insurer-verified* annual mileage—and ~~applicant-estimated determinations and for estimated~~ annual mileage

determinations, as specified. This bill would also make various findings and declarations.

Under existing law, Proposition 103 may not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote, $\frac{2}{3}$ of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The California Global Warming Solutions Act of 2006
- 4 (Division 25.5 (commencing with Section 38500) of the Health
- 5 and Safety Code) requires California to reduce statewide
- 6 greenhouse gas emissions to 1990 levels by the year 2020.
- 7 (b) A reduction in the average vehicle miles traveled per
- 8 California motorist may lead to a substantive reduction in
- 9 greenhouse gas emissions.
- 10 (c) Providing insurance-based incentives to motorists to drive
- 11 less may be a successful way to reduce overall vehicle miles
- 12 traveled.
- 13 (d) Current state automotive insurance rates may not accurately
- 14 reflect the miles that motorists drive.
- 15 (e) According to the United States Environmental Protection
- 16 Agency, once an individual purchases a car, roughly 88 percent
- 17 of their transportation costs remain much the same on a monthly
- 18 basis regardless of how much or how little he or she drives.
- 19 (f) The increase in traffic density from a typical additional driver
- 20 increases total statewide insurance costs of other drivers.
- 21 (g) Implementing new programs that offer insurance on a
- 22 mileage basis may effectively reduce vehicle miles traveled and
- 23 help the state achieve the goals outlined in the California Global
- 24 Warming Solutions Act of 2006.
- 25 (h) Verifying miles driven ensures insurance rates that more
- 26 accurately reflect vehicle miles traveled and provides incentives
- 27 for California drivers to reduce driving and emissions.
- 28 (i) (1) Proposition 103 created a system of setting motor vehicle
- 29 insurance rates based on specified criteria:

1 (A) Prior to Proposition 103 in 1988, motor vehicle insurance
2 ratesetting factors generally included the age, sex, marital status,
3 driving record, type of vehicle and home address of the insured.
4 Insurance companies also took into consideration other factors
5 such as their claims experience, income, and expenses.

6 (B) The November 1988 Ballot Pamphlet provided to voters by
7 the Secretary of State included an analysis of Proposition 103 by
8 the Legislative Analyst which provided, "In general, the measure
9 requires that rates and premiums for automobile insurance be
10 determined on the basis of the insured person's driving record,
11 miles driven and number of years of driving experience."

12 (C) Section 2 of Proposition 103 states, "The purpose of this
13 chapter is to protect consumers from arbitrary insurance rates and
14 practices, to encourage a competitive insurance marketplace, to
15 provide for an accountable Insurance Commissioner, and to ensure
16 that insurance is fair, available, and affordable for all Californians."

17 (2) As greenhouse environmental concerns have increased and
18 as the price of gasoline has reached historic high prices, there are
19 environmental and economic public policy reasons to encourage
20 motorists to drive less. These reasons are consistent with the
21 purpose of Proposition 103. Proposition 103 provides that as
22 motorists drive less, their motor vehicle insurance rates are reduced.

23 (3) However, insurance companies overcharge motorists who
24 overestimate the miles driven and undercharge motorists who
25 underestimate the miles driven. Verifying miles driven will better
26 enable insurance companies to charge accurate rates based on
27 actual miles driven.

28 SEC. 2. Section 1861.02 of the Insurance Code is amended to
29 read:

30 1861.02. (a) Rates and premiums for an automobile insurance
31 policy, as described in subdivision (a) of Section 660, shall be
32 determined by application of the following factors in decreasing
33 order of importance:

34 (1) The insured's driving safety record.

35 (2) The number of miles he or she drives annually. In
36 determining automobile insurance rates and premiums based on
37 the number of annual miles driven, an insurer may apply different
38 rating factors for insurer-verified annual ~~mileage obtained through~~
39 ~~voluntary mileage-based insurance programs approved by the~~
40 ~~department for applicant-estimated annual mileage.~~ *mileage*

1 *determinations, in accordance with department-approved voluntary*
2 *mileage-based insurance programs, and for estimated annual*
3 *mileage determinations.*

4 (3) The number of years of driving experience ~~of the insured~~
5 *the insured has had.*

6 (4) Those other factors that the commissioner may adopt by
7 regulation and that have a substantial relationship to the risk of
8 loss. The regulations shall set forth the respective weight to be
9 given each factor in determining automobile rates and premiums.
10 Notwithstanding any other provision of law, the use of any criterion
11 without approval shall constitute unfair discrimination.

12 (b) (1) Every person who meets the criteria of Section 1861.025
13 shall be qualified to purchase a Good Driver Discount policy from
14 the insurer of his or her choice. An insurer shall not refuse to offer
15 and sell a Good Driver Discount policy to any person who meets
16 the standards of this subdivision.

17 (2) The rate charged for a Good Driver Discount policy shall
18 comply with subdivision (a) and shall be at least 20% below the
19 rate the insured would otherwise have been charged for the same
20 coverage. Rates for Good Driver Discount policies shall be
21 approved pursuant to this article.

22 (3) (A) This subdivision shall not prevent a reciprocal insurer,
23 organized prior to November 8, 1988, by a motor club holding a
24 certificate of authority under Chapter 2 (commencing with Section
25 12160) of Part 5 of Division 2, and which requires membership in
26 the motor club as a condition precedent to applying for insurance
27 from requiring membership in the motor club as a condition
28 precedent to obtaining insurance described in this subdivision.

29 (B) This subdivision shall not prevent an insurer which requires
30 membership in a specified voluntary, nonprofit organization, which
31 was in existence prior to November 8, 1988, as a condition
32 precedent to applying for insurance issued to or through those
33 membership groups, including franchise groups, from requiring
34 such membership as a condition to applying for the coverage
35 offered to members of the group, provided that it or an affiliate
36 also offers and sells coverage to those who are not members of
37 those membership groups.

38 (C) However, all of the following conditions shall be applicable
39 to the insurance authorized by subparagraphs (A) and (B):

1 (i) Membership, if conditioned, is conditioned only on timely
2 payment of membership dues and other bona fide criteria not based
3 upon driving record or insurance, provided that membership in a
4 motor club may not be based on residence in any area within the
5 state.

6 (ii) Membership dues are paid solely for and in consideration
7 of the membership and membership benefits and bear a reasonable
8 relationship to the benefits provided. The amount of the dues shall
9 not depend on whether the member purchases insurance offered
10 by the membership organization. None of those membership dues
11 or any portion thereof shall be transferred by the membership
12 organization to the insurer, or any affiliate of the insurer,
13 attorney-in-fact, subsidiary, or holding company thereof, provided
14 that this provision shall not prevent any bona fide transaction
15 between the membership organization and those entities.

16 (iii) Membership provides bona fide services or benefits in
17 addition to the right to apply for insurance. Those services shall
18 be reasonably available to all members within each class of
19 membership.

20 Any insurer that violates clause (i), (ii), or (iii) shall be subject
21 to the penalties set forth in Section 1861.14.

22 (c) The absence of prior automobile insurance coverage, in and
23 of itself, shall not be a criterion for determining eligibility for a
24 Good Driver Discount policy, or generally for automobile rates,
25 premiums, or insurability. However, notwithstanding subdivision
26 (a), an insurer may use persistency of automobile insurance
27 coverage with the insurer, an affiliate, or another insurer as an
28 optional rating factor. The Legislature hereby finds and declares
29 that it furthers the purpose of Proposition 103 to encourage
30 competition among carriers so that coverage overall will be priced
31 competitively. The Legislature further finds and declares that
32 competition is furthered when insureds are able to claim a discount
33 for regular purchases of insurance from any carrier offering this
34 discount irrespective of whether or not the insured has previously
35 purchased from a given carrier offering the discount. Persistency
36 of coverage may be demonstrated by coverage under the low-cost
37 automobile insurance program pursuant to Article 5.5 (commencing
38 with Section 11629.7) and Article 5.6 (commencing with Section
39 11629.9) of Chapter 1 of Part 3 of Division 2, or by coverage under
40 the assigned risk plans pursuant to Article 4 (commencing with

1 Section 11620) of Chapter 1 of Part 3 of Division 2. Persistency
2 shall be deemed to exist even if there is a lapse of coverage of up
3 to two years due to an insured's absence from the state while in
4 military service, and up to 90 days in the last five years for any
5 other reason.

6 (d) An insurer may refuse to sell a Good Driver Discount policy
7 insuring a motorcycle unless all named insureds have been licensed
8 to drive a motorcycle for the previous three years.

9 (e) This section shall become operative on November 8, 1989.
10 The commissioner shall adopt regulations implementing this
11 section and insurers may submit applications pursuant to this article
12 which comply with those regulations prior to that date, provided
13 that no such application shall be approved prior to that date.

14 SEC. 3. The Legislature finds and declares that this act furthers
15 the purpose of Proposition 103.